

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ANTHEM, INC.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 5/16/2025

20 Civ. 2593 (ALC) (KHP)

ORDER

WHEREAS, Plaintiff the United States of America (the “United States” or “Government”) has brought this action against Defendant Anthem, Inc. (“Anthem”), pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*;

WHEREAS, this case is presently in discovery;

WHEREAS, pursuant to the Court’s Orders dated October 4, 2023 and November 19, 2024 (ECF Nos. 140, 272), the Government has produced certain documents to Anthem that the United States initially withheld on deliberative process privilege grounds in a separate litigation, *United States of America ex rel. Benjamin Poehling v. UnitedHealth Group, Inc., et al.*, 16 Civ. 08697 (C.D. Cal.) (ECF Nos. 324, 366) (the “*Poehling* Litigation”) but which the court in the *Poehling* Litigation subsequently ordered the Government to produce to the defendants (the “Withheld Documents”);

WHEREAS, Anthem intends to depose current and former Government employees in this case and may ask questions regarding the Withheld Documents or otherwise seek testimony that the Government contends is protected by the deliberative process privilege.

WHEREAS, the Court has determined that discovery in this case will be facilitated if

witnesses testify about certain topics that the Government contends are protected by the deliberative process privilege.

ACCORDINGLY, IT IS ORDERED THAT:

1. If necessary to respond to a question posed at a deposition, current and former Government employees shall provide testimony that the Government contends is protected by the deliberative process privilege and such testimony shall not be considered voluntary and shall not constitute a waiver of the deliberative process privilege, provided that the testimony (i) is on a topic with regard to which any Government witness previously provided testimony in the *Poehling* Litigation or (ii) concerns any document produced in either the *Poehling* Litigation or the above-captioned litigation.
2. The Government reserves the right to assert the deliberative process privilege to the extent Anthem seeks testimony that the Government contends is protected by the deliberative process privilege, provided that the testimony (i) is not on a topic with regard to which any Government witness previously provided testimony in the *Poehling* Litigation and (ii) does not concern any document produced in either the *Poehling* Litigation or the above-captioned litigation.
3. If the Government, through its assertion of the deliberative process privilege, instructs a deponent not to answer a question posed at a deposition, Anthem reserves the right to hold open any such deposition and then file a motion to compel the withheld testimony at a second deposition and to seek any other necessary relief.

SO ORDERED:

Dated: New York, New York
May 16, 2025



HON. KATHARINE H. PARKER
United States Magistrate Judge